

Court No.3

Criminal Revision No. 614 of 2001
(Old No. 24/1990)

Harak Singh Revisionist

Versus

Trilochan and State of U.P. Opposite parties

Hon'ble Irshad Hussain, J.

None appear for the revisionist.

Heard learned AGA and perused the record.

This revision was preferred by the complainant against the order dated 1.5.1989 whereby the learned Magistrate had acquitted the accused in criminal case no. 359/88 for want of any evidence against them. It is evidence from record that good number of dates were given to the complainant to produce his evidence but on one pretext or the other he had been seeking adjournments. Finding no just cause for adjournment again the application was dismissed and the impugned order was passed.

Complaint preferred a revision before the Sessions Judge which was numbered as 149/1989 and it came to be decided by the IVth Additional Sessions Judge, Nainital per judgment and order dated 6.10.1989. Having heard the revisionist, the learned judge was of the view that no proper steps of coercive nature were taken to procure the attendance of the witness to be examined in the case and therefore, the complainant was deprived of the opportunity to adduce his evidence in the case. On this premise, the impugned order of the Magistrate was found to be unjust and improper. Accordingly, the same was set-aside and revision against the impugned order was allowed. Aggrieved by the judgment and order of the learned Additional Sessions Judge the accused preferred this revision under section 397/401 of the Code of Criminal Procedure, 1973.

Having gone through the record there appear to be no impropriety in the order passed by the learned Magistrate on 1.5.1989 because despite number of adjournments the evidence of the complainant could be recorded for want of

the attendance of the witnesses. The case was of pretty nature and it was abuse of the process of the court to prolong the pendency of the case and to harass the accused who had no fault of his own in the pendency of the criminal case against him. Sub-section 2 of 245 of the Code Criminal Procedure permit the Magistrate to discharge the accused at any previous stage of the case if for reasons to be recorded such Magistrate considers the charge to be groundless. When no evidence was being produced by the complainant, the allegation against the accused was groundless and therefore the learned Magistrate was legally obliged to dismiss the complaint and passed the order of discharging the accused in the complaint case. Learned Sessions Judge fail to take the account this aspect in the matter and also the glaring fact that the uncalled for delayed pendency of a criminal case not only cause prejudice and harassment to the accused person but it also affects the society at large. Considering this, the order of the learned Sessions Judge was not legally justified and there was no justification to remand the case for trial against the accused.

In view of the above, there is merit in this revision, the same is fit to be allowed.

The revision is hereby allowed and judgment and order dated 6.10.1989 is set aside. The order of the learned Magistrate dated 1.5.1989 is hereby affirmed.

(Irshad Hussain, J.)

Dated 1.11.2003
Rawat